

ADDITIONAL JUDGES OF UNITED STATES COURT IN INDIAN TERRITORY.

APRIL 1, 1896.—Referred to the House Calendar and ordered to be printed.

Mr. CONNOLLY, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany H. R. 4154.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 4154) to amend section 9 of an act entitled "An act to provide for the appointment of additional judges of the United States court in the Indian Territory, and for other purposes," submit the following report:

By sundry acts of Congress jurisdiction over offenses against the Federal laws in the Indian Territory has heretofore been given to the Federal courts for the western district of Arkansas, the eastern district of Texas, and the district of Kansas. By an act passed March 1, 1895, provision has been made for a transfer of this jurisdiction September 1, 1896, to the new courts organized by that act.

It is well known that the district courts in Arkansas, Texas, and Kansas have long been a terror to the criminal classes in the Indian Territory, and the efficiency of these courts in enforcing the Federal laws in the Territory has been the means of making life and property comparatively safe there, notwithstanding the notorious fact that organized bands of outlaws make their hiding places there, who are in great measure restrained in their criminal career by the knowledge that condign punishment will certainly follow their arrest and conviction.

The great efficiency of these courts in enforcing the criminal laws and convicting criminals has arisen from the fact that the juries in those courts have been absolutely free of any domination or terrorism that the indicted criminals or their friends could exercise over them.

While there is no doubt that conditions of life and society are changing in the Indian Territory, yet the change has not yet reached that stage where it would be safe to intrust the enforcement of Federal laws to the average juries that would necessarily be found in the Territory, subjected as they would be to the terrorism and other influences of criminals and their friends, knowing, as they would, that a verdict of guilty against any criminal who had friends would probably be followed by a reign of terror against the jurors who should return such a verdict.

The effect of this act of March 1, 1895, is to transfer on September 1, 1896, to the care of the three courts in the Indian Territory and to the verdicts of juries in that Territory, the lives and property of the denizens of the Indian Territory. And the property, business, and employees' lives of the various railroad and express companies doing business in and through that Territory, as well as of the travelers

through the Territory, will be forced to depend on juries of the Indian Territory for security, for it is well known that no matter how stringent the criminal laws may be or how learned and incorruptible the courts may be, still the safety of life and property from injury, loss, and destruction by violence, depends upon the courage and integrity of juries.

Already the change of jurisdiction which is threatened by the act of 1891 has aroused and alarmed the peaceable residents as well as the various business interests in the Territory, and express companies doing business through the Territory have withdrawn their money-carrying business from the Territory.

Your committee have before them a communication on this subject dated January 25, 1896, from the general superintendent of one of the leading express companies of the country, from which we quote:

Recently a bill has been presented to Congress * * * for the retention of jurisdiction over crime committed in the Indian Territory by the United States courts at Fort Smith, Ark., Paris, Tex., and for the southern division of Kansas. Express companies which do business in the Indian Territory are very much interested in having this bill become a law. A little over a year ago the express companies found it so hazardous to handle money within the Indian Territory that they were compelled to withdraw from that Territory that part of their business.

The Territory was overrun with bandits who not only robbed the trains, but robbed the express offices; one of the agents of Pacific Express Company has been killed while his office was being robbed. The loss to the express companies did not consist wholly in the money taken by the robbers, there having been very great expense in endeavoring to protect the trains and agents, and in efforts to capture the robbers.

About that time the marshals and deputy marshals of the courts I have referred to instituted a vigorous crusade against the bandits, which resulted in the capture of a large number of them, some of whom have paid the penalty of their crimes with their lives. This resulted in breaking up nearly all the numerous bands, and the vigorous and fearless administration of justice by these courts has, up to this time, deterred the formation of new bands. The new courts which have been established in the Indian Territory have been, as I understand it, given jurisdiction over these crimes, and I wish to say that such jurisdiction by these courts within the Territory can not, in my opinion, be made effective for the prevention of crime.

Juries for such courts having sufficient courage and patriotism to enforce the law could not be obtained.

These bandits have the citizens of the Indian Territory thoroughly terrorized, and any jury which would find one of these desperadoes guilty would be sure to be assassinated by his friends. This assertion is based upon our experience and knowledge of the condition of things within the Territory.

Recently we have received information that bands of robbers are now forming, and it is their avowed intention to begin operations against railroad and express companies and others in September, or as soon as the law giving to the Territorial courts the jurisdiction referred to becomes effective.

Your committee has also received a memorial from the governor and over fifty of the officials and leading men of the Chickasaw tribe of Indians, residents of the Territory, which sets forth their views as follows:

We are heartily and sincerely in favor of that peace and security in the Indian country which can alone come from an enforcement of the laws of the United States applicable thereto, and if this continues to be done, as it has been done by the United States courts at Fort Smith, Ark., and Paris, Tex., we feel that we can take care of our own criminal classes.

Under treaty obligations, and therefore in justice to us, the Government of the United States is pledged and in duty bound to take all necessary steps to effectually suppress lawlessness and crime in the Indian Territory.

No more effective means can be taken, looking to the effective enforcement of the law, than to continue and retain the present jurisdiction over the Indian country of the United States courts at Paris, Tex., and Fort Smith, Ark., over the higher and graver classes of criminal offenses.

These Federal courts, having jurors free from prejudice or bias, and who therefore act without fear or favor, have been most effective in the trial and conviction of the worst criminals who ever infested our country. Besides, they have ever shown that

they are the true friends of the Indian; that they know his rights and have dared maintain them.

We assert that the majority of the higher and graver class of criminal offenses in the Indian country are committed by those people known in that country as the criminal-intruder class from the States, and the crimes not committed by them are very largely committed through their instigation and example.

This jurisdiction should be given and retained in said courts for the following reason, as we believe:

As is well known, there are two distinct classes of people now occupying the Indian country. One class, the members of the tribes or citizens of the respective nations, the other class is the white man who has settled in this country. Conflicts are frequent between these two contending classes, and crimes are committed by the one upon the other. When these conflicts arise they should be settled by a fair and impartial tribunal. This can not be done if the person charged with such offense is to be tried in the Indian Territory. The jurors there necessarily belong to one or other of these two classes, each with a sympathy for his own people, and will be incapable of doing justice to the other.

The jurors of the United States courts at Fort Smith, Ark., and Paris, Tex., are beyond these influences, and therefore entirely unbiased and unprejudiced, and besides the United States courts at these places have demonstrated by experience that they have been the only effective barriers between such contending classes.

The abandonment of such jurisdiction would, we believe, greatly increase such class of crimes, as we believe such criminal classes would have no fear of the courts and jurors in said Indian Territory.

Your committee also have a memorial from the officers of the Kansas City, Pittsburg and Gulf Railroad Company—which company does a large business in and through the Indian Territory—in which they strongly urge the retention of criminal jurisdiction over graver crimes of the Indian Territory in the United States courts at Fort Smith, Paris, and in Kansas.

They say of these courts:

They are the greatest blessing the people of the Indian country have had; that they have aided them in their journey along the pathway of civilization; they fearlessly declare and vindicate rights; they have stood by the people of the Territory in their contest with the criminal invader of their country; they have taught the peaceable people of the Indian Territory to rely upon that great handmaiden of civilization whose mission is peace and harmony—the law—as upheld by brave, fearless, just, and impartial courts. * * *

We fear the gravest consequences to express and railroad companies in that country if, in its present condition, the jurisdiction of these courts is taken away. They, and they only, in our judgment, can cope with the lawless criminals who have refuged into the Indian country.

To the same effect, and in equally vigorous terms, is a memorial your committee has received from the officers of the Wells-Fargo Express Company, which does a large business in the Territory. They say:

The environment of the whole class of people in the Indian country is such that they can not act with that spirit of freedom and independence necessary to secure an impartial and an efficient enforcement of the law for the protection of life and property in the Indian country. In our judgment, these strong judicial arms of the Government should remain extended over the Indian country until that country is able to place its star on our flag—until its autonomy is changed from what it is now to statehood.

The United States district judge at Fort Smith, Ark., who has had over twenty years' experience in that court in dealing with the criminal classes of the Indian Territory, and whose judgment is therefore of great value on this question, writes to the committee, under date of January 21, 1896, as follows:

DEPARTMENT OF JUSTICE, EIGHTH CIRCUIT,
Fort Smith, January 21, 1896.

In reply to your letter of the 17th instant, asking me to give my views upon the proposition as to whether the jurisdiction now in the United States courts at Fort Smith, Ark., and Paris, Tex., over the Indian country, should remain until there is a change in the condition of that country. As you are well aware, as far as I am

personally concerned, to take away this jurisdiction would remove a great burden from my shoulders, because for twenty years I have had to wrestle with one of the greatest problems of the age, a problem growing out of a contest between civilization and barbarism, a problem which exists because of the intrusion into the Indian country of large numbers of refugee criminals from the different States in the Union. To relieve me of this responsibility would be to take from me a great burden; but at the same time, while the Indian country is in its present condition, I can not see that it would inure to the benefit of that country or its peaceable and law-abiding people, but on the contrary, in my judgment, it would increase crime there.

As you are aware, the Federal court for the western district of Arkansas has been held at Fort Smith since the year 1871. After the State was divided into two districts the court for the western district of the State, up to 1871, was held at Van Buren. The United States courts for the State of Arkansas, and then for the western district of Arkansas, have had jurisdiction for the punishment of crimes committed in the Indian country ever since the 15th of April, 1844. For over half a century have the people of Arkansas, as jurors in the Federal courts, administered the law for the Indian country. These courts, first for the State of Arkansas and then for the western district of Arkansas, have had criminal jurisdiction over the whole of the Indian country. From its eastern boundary to the Texas and Colorado lines was within the jurisdiction of this court. For some years this jurisdiction has been divided between the United States courts for the eastern district of Texas and the United States courts for the district of Kansas, held at Wichita. More recently the United States courts in the Indian Territory have been established. They have as yet but limited jurisdiction over any of the higher crimes under the laws of the United States.

The fact that the criminal laws of the United States have been extended over the Indian country, and that the United States courts for the western district of Arkansas have had jurisdiction to enforce those laws, is why it is there are so many criminal cases tried in this court, and the same remark applies with equal force to the condition which exists in the United States courts for the eastern district of Texas, held at Paris, Tex. There have been perhaps more criminal cases of great magnitude tried in the courts at Fort Smith than in any one court in the world, yet there are fewer of these cases which come from that part of the district in the State of Arkansas than come from any district in the United States. The great majority of criminal cases in the Federal courts usually are violations of the laws of the United States regulating the operations of the Government, such as counterfeiting, offenses under the postal laws, offenses affecting the revenue department of the Government, such as violations of the revenue laws, cutting timber, etc.

Now, there are less of these crimes committed in the State part of the western district of Arkansas than in any other Federal jurisdiction I know of. That part of the district is proverbially quiet and orderly, and largely free from violations of the Federal laws, and its people have as high a respect for the laws of the United States as people to be found in any section of the country. The whole country can with slight effort understand that these great crimes for which criminals are tried and punished in the Federal courts here are not crimes committed by the people of Arkansas, but they are very largely crimes committed in the Indian country by the refugee criminals from every State in the Union. Everyone should know that the Federal courts do not have jurisdiction over cases of murder committed in the State, or over other criminal offenses affecting individual rights, such as the rights to persons or property.

It can therefore be seen that the court here, with its juries, has had cast upon it the great responsibility of trying escaped criminals from every State in the Union. This is true also of the court at Paris, Tex. The records of the Federal court show that the great proportion of criminals tried for murder and other high crimes are not Indians, but whites and negroes, citizens of the United States, many of whom have refugee into the Indian country. As you well know, courts are the greatest agencies of civilization to be found in any system of government, because, if efficient and able, they overcome the great enemy of peace and order, and consequently of civilization—the man of crime, the man of blood. He represents savagism and brutality, while the majesty of the law, as upheld by the courts, represents a state of public order and tranquillity growing out of the security of the citizen in all his rights.

As you well know, I have for almost twenty-one years been the presiding judge over the United States courts at Fort Smith, and I think it may be truthfully said that during that time more has been accomplished by the United States courts at Fort Smith to establish the supremacy of the law in the Indian country than was ever before accomplished in any country with the same conditions affecting it. I think my large experience here has enabled me to understand the necessity for a vigorous enforcement of the laws in that country; the necessity for having the opportunity of selecting jurors who can from their surroundings act without fear, favor, or affection. It may be said without contradiction that the laws of the United States

have been more often vindicated in the Federal courts at Fort Smith than in any other.

The worst bands of desperadoes, murderers, and outlaws to be found in any civilized land have infested the Indian country, having run from the laws of the States. A greater per cent of them have been captured and brought to merited punishment by the United States courts here and at Paris, Tex., than in any other court. It is a maxim, that certainty of arrest and reasonable certainty of conviction follows the commission of crime in the Indian country. The members of banditti after banditti have been captured, sent to prison, convicted of murder or other high crimes. The terror of certain punishment has been held before the criminal-minded. Because of this certainty of punishment in the United States courts here and at Paris, Tex., and the confidence the law-abiding people have in their integrity, ability, and desire to protect the good people of the Indian country, mobs rarely exist in that country. The enforcement of the laws of the United States in these courts has rightfully, properly, and justly been vigorous, impartial, just, and most efficient. These courts have done more than courts anywhere to uphold the laws of the land, to protect the innocent by the punishment of the guilty. They do more than all agencies besides to make civilization a reality in the Indian country.

As you are aware, the Indian courts have no jurisdiction over offenses committed by citizens of the United States, and if they had, surrounded as they now are, they are hardly strong enough, notwithstanding their willingness to uphold the law, to contend with and punish this vast horde of refugee criminals who have in violation of law sought nesting places in the Indian country. The United States courts at Paris and Fort Smith are courts where certainty of arrest and surety of punishment exists. The greatest blessing the Indian people have had or now have is these Federal courts who have stretched their strong arms over them for their protection as well as the protection of all the peaceable and law-abiding citizens in that country. They have aided the Indian in his journey along the pathway of civilization. These courts have stood by all the peaceable and law-abiding citizens in the Indian country in their contest with the criminal invader of that country—the man of blood. These courts have taught such people to rely upon that great handmaiden of civilization whose mission is peace and harmony—the law as upheld by courts who have the opportunity of performing their duty.

Now, in the condition of that country, there is a greater necessity for the strong arm of the Government as wielded in the Federal courts at Fort Smith and at Paris, Tex., to be stretched out over it now than ever before, and in regard to the change of jurisdiction in its present condition, to my mind, it would be almost fatal to the safety of the good citizens of that country. There are many good people there among the Indians as well as among the whites who are in that country, but their environment is such that in my judgment it would be very difficult to put them in a position where they could fearlessly perform their duty as jurymen. The juries in the Federal courts both at Paris and at Fort Smith are entirely without any feeling of race prejudice and they decide the cases before them irrespective of any feeling that may be entertained for or against the one accused or those who accuse him.

As you know, there are many lawless and desperate men who have infested that country, and they justly fear these courts of the United States which have been engaged in bringing them to justice. For twenty years, by my own personal observation, the Federal court at Fort Smith has been placed in direct contact with this element, and it has taught the criminal element an object lesson which has inured to the lasting benefit of the Indian country. It has not only taught the Five Civilized Tribes that they can safely rely upon the laws of the United States when they are properly enforced, but it has taught the whole country a lesson of the greatest benefit to it.

As you know, the Government has at Fort Smith a very fine court-house, and perhaps the best jail in the United States, built at great expense. There is attached to the jail a Government hospital in which are cared for, treated, and nursed the persons who are brought here charged with crimes. None of these things exist in the Indian country. In fact, there is not a jail there to-day, nor is there likely to be soon, that would hold the lawless and desperate men who are now confined in the jail at Fort Smith. If there ever was a time when the protecting power of these courts should be exercised to secure the peace and protection which should be afforded to the honest and upright citizens in the Indian country it is now, because that country is in a formative condition. Hundreds and thousands of men, many of them reckless, many of them criminals, have flocked into that country in anticipation of some opportunity that might be afforded them, and they have to be dealt with by a power that is so free and independent that it can exercise the full measure intended by the law to be exercised to secure the rights of the people.

As you know, there can not be obtained better jurymen anywhere than make up the panels in the Federal court at Fort Smith. They are men of intelligence, men of integrity, men who, as a rule, dispose of cases without bias or without prejudice,

and then they are so situated that they can act independently. While it matters not how good men may be in the Indian country, and how willing they may be to uphold the law, their environment is such that they can not with safety enforce the law against the members of the banditti that at times have infested that country, though by the vigilance and activity of the courts at Fort Smith and Paris they are now largely broken up. It is not likely that men can afford, if willing, to find verdicts of guilty, say for murder, against members of lawless bands when the confederates of the man convicted would shoot them down or destroy their property.

Men can not afford to uphold the law of the United States, great as the duty may be, under such circumstances. And it is my judgment, after twenty years' experience with these conditions which exist, that the strong judicial arm of the Government, as it has been wielded by what are sometimes called these outside courts, should remain extended over the Indian country, and that the higher crimes affecting life and property should be brought before these outside courts, and that their jurisdiction to try such crimes should remain until that country is able to place its star on our flag—until its autonomy is changed from what it is now to statehood.

Respectfully, etc.,

I. C. PARKER.

The Indian Territory is no longer a closed country. Railroads have made public passageways through it, along which thousands of citizens of the States are annually compelled to travel from east to west and from north to south in pursuit of business or pleasure, and over which millions of dollars' worth of property and treasure belonging to citizens of the different States are necessarily carried in the ordinary course of commerce between the States, and no chances should be taken that would imperil the safety of these travelers or this commerce between the States; and your committee, regarding it as a dangerous experiment to remit the protection of these travelers and this commerce to the courts and juries of the Indian Territory, believe that the jurisdiction heretofore and now exercised over crimes committed in the Indian Territory in violation of the Federal laws should be continued, as provided by this bill, instead of being turned over to the Indian Territory courts, as will be the case on September 1, 1896, unless this bill becomes a law. Your committee therefore report this bill back with the recommendation that it do pass.